No. 109.

FILED
JAN 22 1900
JAMES H. McKENNEY,
Clerk.

Sup. Ct. Dec. of Sullivan & Clapp for D. C.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Jan. 22, 1900.

No. 109.

JAMES BRISTOL, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF SOPHIA M. BRISTOL, DECEASED, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, MINNESOTA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

SUPPLEMENTAL BRIEF FOR THE DEFENDANT IN ERROR.

GEORGE H. SULLIVAN,
MOSES E. CLAPP,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-22-1900

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 109.

JAMES BRISTOL, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF SOPHIA M. BRISTOL, DECEASED, PLAINTIFF IN ERROR,

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Supplemental Brief for Defendant in Error.

We feel that some statements made in our brief may be stated more clearly than as therein stated, and some points made by plaintiff in error may require a more thorough discussion, and therefore have filed this supplemental brief.

I.

The statement of the law of Minnesota, found on page 10 of our brief, while it is a correct statement of the law, may not be as plain as it might be stated.

Under the law of Minnesota, taxes may be levied against personal property within its territorial limits owned by a resident or non-resident. If not paid, a warrant of distraint may be issued against the specific property taxed, if it is the subject of distraint. If the warrant is returned unsatisfied, a citation is issued, which is in effect a summons requiring the party to show cause why the tax should not be paid, and to this summons defense may be interposed, among other things, that the property was not subject to taxation. This summons must be served either personally or by attachment and publication. If the service is personal, a judgment may be rendered, upon which execution may issue against any of the defendant's property situate in Minnesota. If the service is by attachment and publication, judgment may be entered, but the execution issued thereon can only be levied upon the specific property attached; or if the owner dies, the claim for taxes may be filed in the probate court as a claim against the estate, and, if allowed, it becomes a charge only against the property of the estate in Minnesota within the jurisdiction of the probate court where the claim is filed.

These provisions apply equally and alike to residents and non-residents.

II.

We next refer to the fact that in the brief of plaintiff in error the point is constantly urged that under the laws of Minnesota a personal judgment may be rendered against a non-resident. In that connection counsel make the suggestions:

(*a.*) That in the case at bar the record does not show that the property taxed was comprised in the inventory filed in the probate court.

(*b.*) That there are not sufficient allegations in the complaint to sustain an action *in rem* against the property. It

is not alleged or found that the property taxed was in court or in existence.

(*c.*) That the judgment rendered was a personal judgment.

And on page 28 the claim is made that the judgment has been rendered against the representative of the estate and not against the property. This latter statement is, of course, clearly a mistake, as the judgment is against the estate of Sophia Bristol (Record, p. 46), but running through their brief is the constantly reiterated statement that the judgment is a personal judgment.

We discuss this question with its subdivisions on page 19 of our brief, but feel that perhaps it should receive further discussion. The two suggestions *a* and *b* may be discussed together. The fact that counsel insists that the record fails to show that the credits against which the taxes were assessed are not comprised in the inventory, and that there is no allegation that the property taxed was in court, shows, we think, a misapprehension of the force and scope of the judgment that was entered and of the character of the proceedings in the case at bar. Of course this proceeding arose and was instituted in the probate court by the plaintiff in error applying for ancillary administration on the estate in Minnesota.

The plaintiff in error filed an inventory. This would give the probate court jurisdiction beyond any question. Plaintiff in error, on the last page of their brief, state that the property has at all times since the levy of the taxes been as much within the State as it was at the time the taxes were levied, and the whole proceeding bears out this statement. If it is desired to emphasize the fact that plaintiff in error omitted to list this property in his first inventory, we have no objection. It is wholly immaterial, inasmuch as his mere petition for letters of ancillary administration

would give the probate court jurisdiction. After the probate court acquired jurisdiction by the filing of the petition, the plaintiff in error removed the question of the validity of this claim to the circuit court of the United States. If the probate court had jurisdiction, surely the circuit court had jurisdiction, to determine the validity of this claim. Now, whether there is property which can be reached under the judgment of the circuit court to satisfy this claim, or how much property there is which can be reached, or in what manner such property may be reached, are questions that cannot arise until we come to enforce the judgment. These questions have no relation whatever to the rendition of the judgment itself. These questions are not involved in the adjudication by the court. The court having jurisdiction can only render its judgment allowing the claim as a valid claim against the estate, and the question of whether there is any or sufficient property to satisfy it will arise when we seek its enforcement.

At the time the consideration of this claim was removed to the circuit court, the only inventory filed was the one referred to in the record. It was perfectly competent for defendant in error to require the plaintiff in error to file an additional inventory embracing the credits taxed, or to file a bond in lieu thereof.

The record of proceedings in the probate court since the removal of this claim to the circuit court was not removed to the circuit court, and is not in the record before this court in this case, nor was the judgment in the case at bar a personal judgment in the sense in which the expression is so often used by plaintiff in error.

As we have pointed out in our original brief and restated here, there is no law of Minnesota which suggests that a judgment can be obtained in that State against any person, resident or non-resident, except upon personal service or, in case of service, by attachment and publication; and in the latter case it can only be enforced tot he extent of the prop-

erty seized by attachment; and the law makes no distinction between residents and non-residents. The very most that could be claimed for the tax law of Minnesota is that property other than that against which the tax is levied may be taken to pay the tax if found within the State, either upon a judgment obtained in an action commenced by personal service or, if commenced by attachment, is limited to the property attached.

In the case at bar jurisdiction was obtained by plaintiff in error filing his petition in probate court. Under the law and decisions of Minnesota, probate proceedings are proceedings *in rem*.

McNamara *vs.* Casserly, 61 Minnesota, 335–343.
Woerner on American Law Administration, 2d edition, p. 336.

The case at bar was one of ancillary administration of the estate of Sophia M. Bristol. Had the determination of the claim of defendant in error remained in probate court, and been allowed by that court, the order, determination, or judgment allowing it could only have had effect and operate upon property in Minnesota within the jurisdiction of the probate court. Such allowance could not affect the executor personally, nor any other executor or administrator or property of the estate situate in any other State, country, or jurisdiction.

Johnson *vs.* Powers, 139 U. S., 156.
Stacy *vs.* Thrasher, 6 How. U. S., 44.
Woerner on Am. Law Admin., 2d ed., p. *361.

Did the removal of the question as to the validity of the claim of defendant in error from the probate court to the circuit court of the United States confer upon the latter court any other or further jurisdiction than that possessed by the probate court? Does the judgment in the case at bar have any more effect, either extra territorially as a personal

judgment or otherwise, than if it were the order of the probate court allowing the claim? Is it anything more in scope and effect than an order or judgment allowing the claim against the estate?

It may be a question whether the judgment of the circuit court could be enforced in that court beyond the bond given on appeal, or whether it should be enforced in the probate court. Certainly the administration of the estate of Sophia M. Bristol, the marshaling of assets, payment of claims, and final distribution of assets remain with the probate court, and, as we have already suggested, the judgment of the circuit court is nothing more than the allowance of the claim.

While the allowance of a claim in probate court may be said to be a judgment, it is only an adjudication that the claim is a valid one against and should be paid out of the assets of the estate. Such a judgment is in no sense a personal judgment within the usual meaning of the term "personal judgment," or in the sense that a general execution could be issued thereon. It only binds the property of the estate within the jurisdiction of the probate court rendering it, and is not binding against the executor or administrator personally, nor against the executor of the estate or property of the estate within any other State, country, or jurisdiction.

If this proceeding had remained in probate court, under the law of Minnesota the most that court could have done would have been to have made an order allowing the claim and requiring its payment out of the property of the estate within its jurisdiction. If the plaintiff in error, by removing the claim to the circuit court of the United States and under a judgment in the form of which he has stipulated, is bound further than he would have been had the claim remained in probate court, he should not be heard to complain.

As a further and final answer to criticisms of counsel as

to the form of the judgment, we beg to call the attention of the court to the fact that the judgment in this case as to form was stipulated by counsel for plaintiff in error.

Record, p. 46.

III.

We further desire to call attention of the court to the claims of plaintiff in error of the delay in enforcing this claim. In 1885 the supreme court of Minnesota, *In re* Jefferson, 35 Minn., page 215, *supra*, held that claims for taxes could be enforced in probate proceedings. The county of Washington then had its choice, after levying the taxes, which was done every year, to attempt collection under the statute by attachment and publication or to wait until Sophia M. Bristol should be within the State, so that personal service could be had against her, or to wait the opportunity of collecting it in probate proceedings, as any individual might do.

Sophia M. Bristol inherited the estate while the Jefferson suit was pending, and was the owner of the property when the decision was rendered in that case, and every year but one her agents were notified and requested to list this property for taxation, and they, too, were agents during the time of the former litigation. So, if it were even the subject of equitable consideration, which it is not, the plaintiff in error would not be in position to urge delay on the part of the county. Sophia M. Bristol continued to carry on the loan business after the decision *In re* Jefferson in the same manner as before, and was legally bound to know each year that the property was subject to taxation and was being taxed.

Respectfully submitted.

GEO. H. SULLIVAN,
MOSES E. CLAPP,
Counsel for Defendant in Error.